

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

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IN RE Joint Request of KMC Telecom III, LLC and)
CenturyTel Acquisition, LLC for Approval to)
Transfer Authority to Provide Telecommunication)
Services and to Sell Assets)

T.R.A. DOCKET ROOM
Docket No 05-00092

RESPONSE OF KMC IN OPPOSITION TO
BELLSOUTH'S PETITION FOR LEAVE TO INTERVENE

KMC Telecom III, LLC ("KMC") submits the following response in opposition to the "Petition for Leave to Intervene" filed by BellSouth Telecommunications, Inc. ("BellSouth") on May 5, 2005, in the above-captioned proceeding.

Summary

BellSouth's request to intervene is based on an apparent misunderstanding. The joint petition filed by KMC and CenturyTel Acquisition, LLC ("CenturyTel") requests that the TRA approve (1) the transfer of KMC's assets and customer base in Chattanooga, Tennessee (serving approximately 100 customers) to CenturyTel and (2) the transfer of KMC's intrastate operating authority to CenturyTel. Contrary to the statements made by BellSouth in the carrier's request to intervene, there is nothing in the joint petition requesting the Authority's approval of any assignment, in whole or in part, of the BellSouth-KMC interconnection agreement. BellSouth also states in the intervention request that CenturyTel does not have a certificate to offer the services now provided by KMC. BellSouth has apparently overlooked the fact that the joint petitioners expressly ask that the TRA transfer KMC's intrastate operating authority to CenturyTel and have provided the agency with the appropriate information to approve that request. BellSouth's motion raises no objection to the transfer.

Since the issues raised by BellSouth are not, in fact, the issues in this proceeding and since BellSouth does not raise any objection or demonstrate any legal interest regarding those issues which are before the Authority, BellSouth's request to intervene should be denied.

The Petition

In a joint petition filed March 30, 2005, with the Tennessee Regulatory Authority, KMC and CenturyTel request that the TRA “transfer authority to provide telecommunications service” from KMC to CenturyTel, pursuant to T.C.A. §65-4-113, which governs the transfer of certificates from one utility to another. As required by that statute, the petition sets forth the managerial, technical, and financial capabilities of CenturyTel to offer the services now provided by KMC. See Section C of the Petition, especially Attachments F and G. CenturyTel is a wholly owned subsidiary of CenturyTel, Inc., which already owns three incumbent telephone companies and one competitive, local exchange company (CenturyTel Solutions, LLC) in Tennessee. There is no question—and BellSouth raises none—that CenturyTel is fully qualified to assume the operating authority of KMC.¹

The joint petitioners also request TRA approval of the sale of certain KMC assets which are used to provide telephone service in Tennessee, including KMC’s customer base in the Chattanooga area, to CenturyTel.² The joint petition notes that the sale of these assets and the transfer of the customer base will be transparent to KMC’s customers and will have no impact on the rates, terms, and conditions of service to those customers. Petition, at 6-7.

The joint petitioners do not request that the TRA review or approve any assignment of the BellSouth-KMC interconnection agreement. There is, in fact, no mention of the agreement in the joint petition.

Petition to Intervene

On May 5, 2005, BellSouth filed a request “for leave to intervene” in this proceeding. In paragraph 2 of the request to intervene, BellSouth states that the joint petitioners are “seeking a partial assignment” of the

¹ There are two other KMC entities, KMC Telecom V, Inc. and KMC DATA, LLC, which also have intrastate certificates in Tennessee. See dockets 00-01123 and 01-00705. Those entities are not affected by this transfer.

² KMC also serves customers in the Tri-Cities area. Those customers are being transferred to another carrier (see Docket 05-00076) and are not at issue in this joint petition.

interconnection agreement between BellSouth and KMC. Based on that premise, BellSouth then describes in paragraphs three and four the carrier's reasons for asking to participate in this alleged "assignment" request.

Next, in paragraph 5, BellSouth states that CenturyTel "is not certified by the Authority" to provide competing local service in the Chattanooga area. BellSouth does not acknowledge that the joint petitioners expressly request that the TRA transfer KMC's intrastate operating authority to CenturyTel, nor does BellSouth raise any objection to this transfer.

Applicable Law

The joint petition to transfer KMC's intrastate certificate to CenturyTel is filed pursuant to T.C.A. §65-4-113. Unlike an application for a new certificate (see T.C.A. §65-4-201), the transfer statute does not require the Authority to convene an evidentiary hearing.³ Therefore, the TRA "has the power to convene a contested case hearing if it chooses" but also has the discretion to determine that such a hearing is not required. Consumer Advocate Division v. Greer, 976 S.W.2d 759, 763-764 (Tenn.1998).

Under Greer, a "petition to intervene" in a matter which the TRA has the discretion to handle without an evidentiary hearing should be treated as a complaint and evaluated according to the TRA's rules on filing complaints. See TRA Rule 1220-1-1-.05(1). Here, as in the Greer case, BellSouth has filed a petition to intervene which, stripped of its erroneous assertions, suggests no reason why the transfer request should be denied, much less why the Authority should open a contested case proceeding. The Greer opinion notes that a valid complaint must contain "a specific allegation" so that the joint petitioners have "sufficient information to allow [them] to prepare to meet [their] burden of proof." Id., at 762-763. BellSouth's explanation of its interest in this proceeding is based on the assumptions that the joint petitioners seek TRA approval of the assignment of BellSouth's interconnection agreement and that CenturyTel does not have, and cannot concurrently obtain, intrastate operating authority. As previously discussed, both assumptions are incorrect. The only other basis for

³ The petitioners also seek approval of the transfer of assets from KMC to CenturyTel. Arguably, such approval is subsumed in the request for transfer of the certificate. On the other hand, such a request may require TRA approval under T.C.A. §65-4-112, which concerns the "leasing, merging, or consolidating" of one utility's property with another. Even so, nothing in T.C.A. §65-4-112 requires the TRA to conduct an evidentiary hearing prior to ruling upon such a request.

BellSouth's petition to intervene is a boilerplate recitation that BellSouth's legal interests "may be determined in the proceeding." That is clearly an insufficient basis, under Greer, to open a contested case proceeding

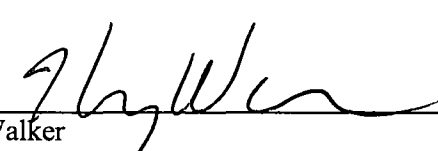
Conclusion

BellSouth's only reasons for requesting that the Authority allow BellSouth to intervene are based on an apparent misunderstanding of the joint petitioners' requested relief. For these reasons, BellSouth's motion should be denied.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: _____

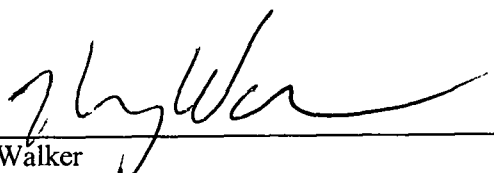

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being forwarded via U.S. mail, to

Guy Hicks
BellSouth Telecommunications
333 Commerce Street
Nashville, TN 37201-3300

on this the 12th day of May 2005



Henry Walker